



**State of New Hampshire**  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2982



Richard Washburn  
PO Box 130  
9 Round Robin Loop  
Fremont, NH 03044

**ADMINISTRATIVE ORDER**

No. WD 02-11

March 14, 2002

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Richard Washburn pursuant to RSA 482-A:6.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, NH.
2. Richard Washburn is an individual having a mailing address of P.O. Box 130, Fremont, NH 03044.

**C. STATEMENT OF FACTS AND LAW**

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in and adjacent to surface waters of the state, shorelines of surface waters, and in wetlands. RSA 482-A:11, I authorizes DES to adopt rules to implement the wetlands law. Pursuant to this authority, DES has adopted NH Admin. Rules Wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

4. Mr. Washburn is the owner of property located at 9 Round Robin Loop, Fremont, New Hampshire, more particularly identified on Town of Fremont Tax Map 6 as Lot 62-12-23 (the "Property").
5. On November 7, 2000 and May 10, 2001, DES personnel inspected the Property. As a result of the inspections, the following has been documented:
  - a) Proper erosion and siltation control measures were not in place or had not been maintained on unstabilized areas of the Property.
  - b) The slope adjacent to the driveway on the Property had not been stabilized.
  - c) DES personnel observed less than 3,000 square feet of fill in forested wetlands as a result of erosion of the unstabilized slope.
6. A review of DES records shows that no permits have been applied for or issued to Mr. Washburn for any activities on the Property.
7. On September 20, 2001, DES inspected the Property and observed that no erosion and sediment control measures had been implemented on the Property, and the slope adjacent to the driveway on the Property had not been stabilized and rutting was evident on the slope.
8. On November 14, 2001, DES personnel inspected the Property and determined that the erosion of the slope along the west side of the driveway of the Property was most likely caused by runoff from the Washburn's lot prior to completion and stabilization of the lot.

#### **D. DETERMINATION OF VIOLATIONS**

1. Mr. Washburn has violated NH RSA 482-A:3 by placing less than 3,000 square feet of fill in wetlands without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders Mr. Washburn as follows:

1. Within 40 days of the date of this Order, stabilize (i.e., loam, seed and mulch) the exposed soils adjacent to the driveway of the Property.
2. Within 40 days of the date of this Order, remove sediment from the forested wetland by hand, preserving existing vegetation.
3. Within 60 days of the date of this Order, provide DES with photographs showing the completed work, in compliance with this Order. Submit the photographs to:

Ana K. Ford  
DES Water Division, Land Resources Management Program  
6 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095

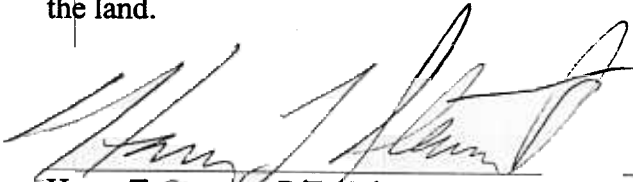
## F. APPEAL

Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing if, in its opinion, good cause is demonstrated by the request. Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

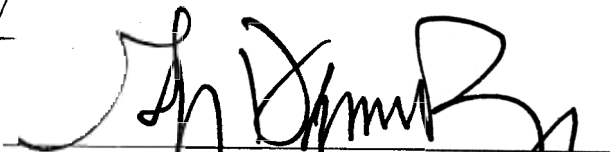
## G. OTHER PROVISIONS

Please note that RSA 482-A:3 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Richard Washburn remains obligated to comply with all applicable requirements, in particular installation of sufficient sediment and erosion controls to prohibit sediment from leaving the Property. DES will continue to monitor Mr. Washburn's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director  
Water Division



George Dana Bisbee, Assistant Commissioner

CERTIFIED MAIL# 7099 3400 0002 9774 8289

cc: Gretchen Rule, DES Legal Unit  
Charles Knox, DES PIP Office  
MaryAnn Tilton, WET/WD/DES  
Ana Ford, WQ/WD/DES  
Rockingham County Registry of Deeds  
Fremont Planning Board  
Fremont Conservation Commission